

**District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO (Washington Heights-West Harlem-Inwood Mental Health Council, Inc. d/b/a The Council's Mental Health Center) and Pamela Pannell.**  
Case 2-CB-9148

5 July 1983

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND ZIMMERMAN

On 2 February 1983 Administrative Law Judge Steven Davis issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions<sup>1</sup> of the Administrative Law Judge and to adopt his recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> In adopting the Administrative Law Judge's conclusion that no violation of Sec. 8(b)(1)(B) of the Act can be established, we rely solely on his findings that Pannell is neither a supervisor within the meaning of Sec. 2(11) of the Act, nor a representative or potential representative of the Employer herein for the purposes of collective bargaining or the adjustment of grievances.

## DECISION

### STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge: Pursuant to a charge filed on January 25, 1982, by Pamela Pannell, an individual, a complaint was issued on March 2, 1983, by Region 2 of the National Labor Relations Board, upon which a hearing was held before me on October 31, 1982. The complaint alleges that District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union AFL-CIO, herein called Respondent, violated Section 8(b)(1)(B) of the National Labor Relations Act, as amended, herein called the Act, by threatening to seek Pannell's discharge and informing her that she was to

appear before its chapter hearing board, all because of her actions in directing the work of employees under her supervision.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

## FINDINGS OF FACT

### I. JURISDICTION

The Employer, the Washington Heights-West Harlem-Inwood Mental Health Council, Inc. d/b/a The Council's Mental Health Center, a New York nonprofit membership corporation, having its principal office and place of business at 1727 Amsterdam Avenue, New York, New York, has been engaged in the operation of a community residence providing medical and professional care services for the mentally disabled. During the past year, in the course of its operations, the Employer derived gross revenues in excess of \$500,000, and during that period it received reimbursements valued in excess of \$50,000 from the United States Government under Medicaid and other Federal programs. Respondent admits, and I find, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

### II. THE CONTENTIONS OF THE PARTIES

The General Counsel alleges that Pannell, a member of Respondent, is also a statutory supervisor and a representative, or a potential and likely representative of the Employer for the purpose of collective bargaining or the adjustment of grievances. He further alleges that as a result of her role as supervisor in directing the work of employees under her supervision, Respondent, in violation of Section 8(b)(1)(B) of the Act, threatened to seek her discharge and notified her that she was to appear before the chapter hearing board.

Respondent argues that Pannell is not a statutory supervisor, nor is she a representative or a potential and likely representative of the Employer for the purposes of collective bargaining or the adjustment of grievances. Moreover, Respondent asserts that, even if Pannell is such a supervisor or representative, the alleged threat that Respondent would seek to have Pannell discharged and the mere notification to her that she was to appear before the chapter hearing board did not constitute coercive conduct by it.

### III. ALLEGED UNFAIR LABOR PRACTICES

#### A. The Employer's Operation and Hierarchy

The Employer is controlled by a community board. At the top of its hierarchy is the executive director, Dr. Clyde A. Pemberton. Below him is the administrator, George Brent. Beneath Brent are the various administrative heads such as the medical director and administration director. Under those persons are the various departments, headed by coordinators. Ana Pereira is the

coordinator of the department involved herein—the transitional housing unit. A component part of the transitional housing unit is the supportive living program, whose coordinator is Terry Payne. Subordinate to coordinator Payne are the two senior residence counselors, Pamela Pannell and Marla Delgado. Below them are the residence counselors, and finally the residence aides.

Essentially, the work of the supportive living program is rehabilitative. It obtains, rents, and furnishes apartments in various locations in Upper Manhattan and places its clients, who are former mental patients, in them. The purpose of the program is to teach activities of daily living to its clients so that they can eventually become a productive part of the community and live on their own. The basic functions taught the clients include such daily living skills as food shopping, meal preparation, roommate relations, planning, and budgeting.

### B. Facts

#### 1. Supervisory status of Pamela Pannell

In 1978, Respondent was certified by the Board as the collective-bargaining representative of a unit of professional employees, including social workers, within which Pannell is included. That unit excluded supervisors. Thereafter, the Employer and Respondent entered into two successive collective-bargaining agreements covering the same unit as set forth in the certification. Both contracts expressly exclude supervisory, confidential executive, and managerial employees from their coverage. Indeed, the senior resident counselors and all positions below them are included in the bargaining unit.

Pannell was hired by the Employer in November 1980 as a senior residence counselor or social worker III. Upon her hire she was informed by the Employer's administrator that her position was a "Union position" and that she would be required to join Respondent. Thereafter, Pannell executed a dues-checkoff authorization and papers relating to Respondent's benefit fund and became a member of Respondent. It is undisputed that Pannell has been a member of Respondent at all material times involved herein.

Pannell testified that when hired she helped set up the supportive living program. She stated that she is in charge of "clinical supervision"—the ongoing supervision of the clients' therapeutic treatment. The clients are seen by the clinical team which consists of the coordinator, psychiatrist, social worker, senior residence counselor (SRC), residence counselor (RC), and mental health worker, all of whom work together in making a treatment plan for the client. Pannell has overall responsibility for clinical management or therapeutic management and supervision of the 24 clients and for the physical management of the apartments in which they reside.

Pannell assigns each RC to about six to eight clients. The assignment is usually made upon the basis of the location of the apartment involved. Thus, if a new client moves into an area serviced by a particular counselor, that counselor would be assigned to that client. However, in the case of a client with complex problems, a counselor who will be able to handle him will be assigned to his case, regardless of the geographical location.

It is the RC's responsibility to ensure that their clients are taught daily living skills such as preparation of a weekly menu and shopping lists, and that they complete household and laundry tasks and also participate in some social activity.

The SRC is responsible for making certain that the RC is properly performing his job. Pannell stated that she meets with the counselor once a week during which he is given specific assignments. The counselor prepares weekly schedules for himself and for his client as to what they intend to do and accomplish in the upcoming week. Other forms, including an apartment inspection form, are also prepared. These forms are given to the SRC on a weekly basis and are used by her to see what type of rehabilitative work is being done with the client and whether the client is making progress toward his goal as set forth in the treatment plan. The forms' contents are discussed "in supervision" once a week between the SRC and the RC, during which they also discuss the clinical and rehabilitative treatment and progress of the client.<sup>1</sup> Another purpose of such meeting, in addition to reviewing the treatment received by the client, is to help improve the skills and knowledge of the RC.

The SRC may modify the work schedules prepared by the RC. Thus, if the RC has scheduled too many activities for the client or himself for the time allotted, the SRC will alter the schedule to make the best use of the time available. Pannell stated that the RC already knows that it is his responsibility to teach the client the activities of daily living, nevertheless she discusses with the RC exactly how, for example, the housekeeping skill should be taught.

Pannell interviewed about eight applicants for the position of RC. She recommended to coordinator Pereira that four of the eight be hired. Only two were actually hired. The interviewing and hiring procedure is as follows. Pannell conducts the initial interview and makes recommendations for hire or not to Pereira who conducts a separate interview and makes recommendations to Executive Director Pemberton. Pemberton also conducts a separate interview. The applicant is then finally interviewed by the Employer's personnel committee.

Pannell has no authority to discharge or recommend the discharge of anyone, nor has she ever done so. If the employee is not performing his job properly she can "reprimand" him by telling him what he has failed to do. If his behavior continues she reports it to the coordinator who "takes over." Pannell stated that the coordinator for the program (Payne) and the coordinator of the unit (Pereira) have authority over the employees. Pannell has no authority to recommend a pay raise for an employee.

Pannell has a master's degree in social work, which is a requirement for the position of SRC.<sup>2</sup> She occasionally meets directly with the clients if they have a specific problem with an RC, apartment, or roommate, or if they wish to discuss their budgets or medications. Pannell, as

<sup>1</sup> Weekly meetings are also held with the entire clinical team where specific problems are discussed.

<sup>2</sup> Pannell's gross annual salary is \$16,800. The residence counselors, specifically Lloyd Bowers, Anthony Murray, and Ida Newton, earned \$15,630, \$15,367, and \$15,223, respectively.

well as any member of the therapeutic team, writes progress notes in the client's medical chart regarding contacts with the client. Pannell is also responsible to see that the client's funds are properly received by the Employer. She spends about 30 percent of her time processing the papers to obtain such funds and visiting Government offices to expedite their receipt.

Pannell was told in November or December 1981 by Pereira that if anyone asked her for an explanation as to any union or employee matter she was to refer him to Pereira. Pannell was further advised that it was not her responsibility to deal with union representatives—that that was the duty of Pereira inasmuch as she was the coordinator. Pereira also informed her that, since she (Pereira) was the person “responsible for mandating any action, only she could really respond to questions.

Residence Counselors Lloyd Bowers and Anthony Murray, called by Respondent, testified consistently that a client's treatment plan was established based on his functional assessment by members of the clinical team. The SRC and RC would then write a plan as to what basic goals needed to be accomplished. The RC then prepared a weekly schedule of the activities to be performed regarding the client. Occasionally, they received memos from the SRC as to what exactly was to be done with the client. The RC made certain that the client was functioning well in the program by taking his medication, attending day programs, and performing household tasks. The RC met daily, for about 30 to 60 minutes, with the SRC to discuss specific matters relating to a client such as the client's willingness to participate in the program, behavior, medications, and the condition of the client's apartment. The SRC at such meetings made suggestions as to how to deal with the client and as to various activities for them. The RC would contact the SRC if a specific problem arose concerning the client.

Pannell wrote memos to Bowers and Murray reminding them that they failed to submit certain forms; however, they did not regard her as their supervisor. They requested time off from Pereira or Payne. Payne approved their vacation schedule. They punched timecards as did Pannell. Bowers stated that when he was hired he was told by Pereira that Pannell had authority over him as to the clinical aspect or rehabilitative treatment of the client, but that Payne was his supervisor in all other respects. Murray stated that he requested money for clients from Payne and that reimbursement forms for money used for clients were initialed by Pannell but approved by the coordinator and the Employer's administrator. He regarded Pereira as his supervisor.

David White, Respondent's vice president, testified that Respondent was never notified by the Employer that Pannell was a supervisor who should thereby be removed from the bargaining unit.<sup>3</sup>

## 2. The alleged violation of the Act

During the summer of 1981 Pannell observed that the residence counselors were not performing their assign-

<sup>3</sup> The General Counsel noted that it is his position that Pannell has been a member of the bargaining unit from the time of her hire, but nevertheless is a supervisor.

ments. In an effort to increase their productivity, coordinator Pereira ordered that their supervision by the SRC be increased to hourly monitoring. On August 13, 1981, Pannell was unable to locate residence counselors Stanley Gleaton or Ida Newton who were supposed to be on duty. Later that evening Pannell contacted them and asked for an explanation as to their whereabouts. After telling her where they had been they hung up.<sup>4</sup>

The following day, August 14, Gleaton entered Pannell's office and said: “You better stop this shit or you are going to get what you're asking for.” Pannell asked if he was threatening her, whereupon Gleaton put his finger in her face and repeated his statement. Pannell then “ignored him” and he left. Pannell sent a memo as to the August 13 and 14 incidents, with no recommendation, to Pemberton and Pereira.

On the following day, August 15, Pannell received a call from a client who reported a leak in the apartment. She called Gleaton, who lives across the street from the apartment involved, and asked him to go to the apartment before his regular starting time of 11 a.m. in order to attend to the problem. Pannell called the client at 10 a.m. and was told that Gleaton phoned and said that he would be there at 1 p.m. Pannell then called Pereira and reported this incident. Later that day, Edward Lane, Respondent's delegate who is an employee of the Employer, phoned Pannell and told her that she was to stop what she was doing; the Union is a powerful organization and it would run over her like a locomotive, and that he would have her job. Pannell did not respond to that.

Thereafter, in about September or October 1981, the probationary periods of Gleaton and Newton were extended and supervision of them was increased. They resisted the intensified supervision, and continued their poor performance, which included failure to complete assignments and incidents of harassment. Pannell wrote reports of these incidents.

On December 22, 1981, Gleaton entered Pannell's office. He yelled, screamed, used vulgar language and put his finger in her face, and then left. One hour later, Gleaton returned with Edward Lane, Respondent's delegate. Lane asked her why she did not inform the staff of a recent robbery of a residence counselor in one of the buildings where the clients reside. Pannell replied that she was told by coordinator Pereira to refer any questions to her, and she therefore suggested that he speak with Pereira or the administration.<sup>5</sup> Lane insisted on asking Pannell, sat at her desk, asked what she was doing, and stated that she was “threatening her position.” Gleaton then threatened her, called her obscene names, and put his finger in her face. Pannell called her superiors, reported that she was being harassed by Gleaton and Lane, and stated that some action should be taken. She addressed a report of the incident to Pereira, which stated, *inter alia*:

<sup>4</sup> Newton failed to answer Pannell's question as to what work she was allegedly performing at the Center during the time in question.

<sup>5</sup> This was pursuant to Pereira's instructions to Pannell, discussed above, that she direct any inquiries relating to union or employee matters to her.

This situation is getting out of hand and leaves us as supervisors, in a precarious position. Any attempts made by Marla Delgado and myself to resolve sporadic emotional outburst by Mr. Gleaton seem to be of no avail and these events are only worsened by the Union's intervention. He has been given several verbal and written warnings regarding his conduct and work habits, however these warnings have not stopped his outbursts.

I'm requesting that you address this matter immediately. SLP is in a critical period, now having 15 clients and only three (3) Residence Counselors to address their needs. It is a necessity that these Counselors work at a maximum level. If one falters with his assignments it makes it doubly difficult for the others, causing problems to filter not only to the rest of the staff, but to clients as well.

That afternoon, Executive Director Pemberton convened a disciplinary hearing for Gleaton. Pannell testified at the hearing at which Gleaton was present. On January 4, 1982, Gleaton was discharged. The decision to fire Gleaton was made by Pemberton. Pannell, who did not participate in the decision to terminate Gleaton, was informed of the dismissal after Gleaton was so advised.

On January 8, Gleaton sent a letter to Respondent setting forth charges against Pannell.

Respondent's bylaws provide, in relevant part:<sup>6</sup>

It is the objective of the District to provide a democratic and orderly procedure for its members in order to hear and determine grievances, complaints and/or charges and appeals (hereinafter called collective "complaints" brought by or against a member.

(a) A member shall have the right to bring a complaint against another member . . . for any of the reasons set forth in these By-Laws or the National Union Constitution. A complaint by a member against another member shall be filed with the Vice President assigned to the Chapter or Area in which the member, against whom the complaint is filed, is employed.

A hearing shall be held on any such complaint within thirty (30) days of the receipt of the complaint by the Vice President. Notice of the hearing date, time and place shall be sent by the Vice President to the parties concerned in the complaint. It shall be the duty of such Vice President to convene the Board for the hearing.

(b) The Board shall hear the parties and their witnesses and based on all the evidence, oral and documentary, presented, shall render its decision. The Board may dismiss the complaint, impose a reprimand, a censure and/or fine up to a maximum of \$25. It may also recommend to the Division of Hearing and Appeals Board a greater fine and/or suspension or expulsion.

<sup>6</sup> Art. IX, secs. 1 and 2.

On January 19, David White, Respondent's vice president, sent the following letter to Pannell, which is alleged as a violation of the Act:

This is to advise and/or inform you of the following allegations being brought against you by our numbers.

- (A) Excessive misconduct.
- (B) Conduct unbecoming a union member.
- (C) Filing of false charges against the membership.
- (D) Harassment and intimidation of all union staff working under your directions.
- (E) Failure to insure or enforce existing safety regulations in order to secure a safe work environment.

Because of the concern shown by the members, and the seriousness of the allegations, you are hereby directed by District 1199, in accordance with the bylaws, to make an appearance before the Chapter Hearing Board to be convened at Washington Heights Mental Health Center, Room 153 at 5:00 p.m. on Tuesday, January 26, 1982.

It is within your rights to provide at the time of the hearing, any written documentation and/or witnesses you may wish to bring.

Failure to attend this hearing can result in more serious steps, in accordance with our bylaws.

The bylaws provide that the chapter hearing board must comprise a minimum of three delegates, and that "no person shall sit on any Board who is directly or indirectly involved in the subject matter of the hearing or appeal."<sup>7</sup>

Pannell sent letters to Respondent on January 26 and 29 and February 2, essentially demanding representation at the hearing and also claiming that the hearing board contained two or three persons, including Lane, who were biased against her because they assisted Gleaton and Newton in their harassment of her.<sup>8</sup> No written reply was made to these letters and in a conversation with Pannell, White refused to meet with her or discuss the substance of the charges because he believed that such discussion of the merits would constitute an unwarranted interference with the authority of the chapter hearing board. The hearing scheduled for January 26 was postponed twice and never took place. In about March 1982, Pannell was orally informed by delegate Lane that Gleaton withdrew his charges against her. No fine or discipline was imposed upon Pannell.

#### IV. ANALYSIS AND DISCUSSION

The evidence establishes that Pannell is not a supervisor within the meaning of the Act. Thus, she does not hire or fire, or make effective recommendations as to those matters, nor can she recommend a pay raise for an

<sup>7</sup> Art. IX, sec. 1(h).

<sup>8</sup> There are only three delegates employed at Respondent's facility. Pannell was informed by Respondent's organizer, Richard Villa, of the names of the three delegates who comprised the chapter hearing board.

employee. Requests for vacation scheduling were referred to the coordinator. Pannell, as the SRC, functioned as a team leader who gave professional assistance to the RC in the providing of various therapeutic and rehabilitative services to the Employer's clients. Pannell spent a large part of her time performing processing of documents in order to obtain reimbursement for services rendered to clients. Pannell's direction of the work of the RC was professional in nature, consisting of clinical supervision, in which the therapeutic care of clients was reviewed and skills and knowledge were transmitted from more highly trained individuals to those with lesser skills.

Pannell's assignments of clients to counselors are routine, being based mainly upon the geographic area in which the client resided. Her review of the RC's weekly schedules is similarly routine inasmuch as the RC is familiar with the treatment plan and devises his schedule to ensure that the client will be performing tasks that will enable him to progress. Pannell's authority in reprimanding employees is limited. She apparently can only tell employees to complete their work and can warn them about their behavior as she did with Gleaton and Newton. However, beyond that her only authority is writing an incident report and transmitting it to her superiors—with no recommendations as to action to be taken. She lacks even the authority to speak to a union representative regarding union- or employee-related matters. Moreover, it appears that any direction she gives to the RC is "incidental to their professional treatment of [clients] and is basically a product of the more highly developed professional skills that they possess *vis-a-vis* the other members of the social work team."<sup>9</sup>

I thus find and conclude that Pannell does not possess any of the indicia of supervisory status as set forth in Section 2(11) of the Act, and is therefore not a statutory supervisor.

Moreover, the evidence similarly establishes that Pannell was not an Employer representative or a potential and likely representative of the Employer for the purpose of collective bargaining or the adjustment of grievances. Thus, Pannell testified, as set forth above, that she was directed by coordinator Pereira that she was not to deal with any union representatives regarding union- or

employee-related matters. Moreover, there is no evidence that Pannell has been the Employer's representative for the purposes of collective bargaining, nor has she functioned as the Employer's representative for the adjustment of grievances, or is a potential and likely representative for those purposes.<sup>10</sup> Under these circumstances, since Pannell was neither a supervisor nor representative or a potential and likely representative for the purposes of collective bargaining or the adjustment of grievances, no violation of Section 8(b)(1)(B) can be established.<sup>11</sup>

Under these circumstances, I find it unnecessary to reach the question of whether the alleged threat, which I find was made by Respondent's delegate, Edward Lane, on August 15, 1981,<sup>12</sup> or the notification to Pannell on January 19, 1982, that she was to appear before Respondent's chapter hearing board constitutes unlawful coercion of the Employer in its choice of representative in violation of Section 8(b)(1)(B) of the Act.

#### CONCLUSIONS OF LAW

Respondent has not violated the Act in any respect.

Upon the foregoing findings of fact and conclusions of law, I issue the following recommendation:

#### ORDER<sup>13</sup>

The complaint is hereby dismissed in its entirety.

<sup>10</sup> I note in this connection that Pannell is not a supervisor; she is a member of the bargaining unit and her immediate supervisor, coordinator Payne, is not a member of the unit. It is clear that the Employer, given Pereira's instructions to her, has no immediate expectation of having Pannell represent it in collective-bargaining or grievance adjustment. *Electrical Workers Local 134, IBEW (Illinois Bell Telephone Co.)*, 192 NLRB 85, 86, fn. 5 (1971).

<sup>11</sup> *Asbestos Workers Local 127 (Cork Insulating Co. of Wisconsin)*, 189 NLRB 854, 857 (1971).

<sup>12</sup> The threat was that Lane would "have [Pannell's] job and was thus a threat to seek her discharge as alleged by the General Counsel." Pannell impressed me as an honest, sincere, candid person who would testify truthfully. On the other hand, Lane did not testify. I reject Respondent's argument that it was not responsible for Lane's threat. Lane was acting within the scope of his authority when he threatened Pannell and Respondent is accordingly responsible for his conduct. *Teamsters Local 886 (Lee Way Motor Freight, Inc.)*, 229 NLRB 832 (1977).

<sup>13</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>9</sup> *Beth Israel Medical Center*, 229 NLRB 295, 300 (1977). Accord: *Catholic Community Services*, 254 NLRB 763, 765 (1981), where the case manager in a transitional care program, found not to be a supervisor, exercised many of the same duties as Pannell; *Mount Airy Psychiatric Center*, 253 NLRB 1003, 1008 (1981).